

Message Text

PAGE 01 STATE 030207
ORIGIN NEA-10

INFO OCT-01 ISO-00 COME-00 EB-08 L-03 AF-10 ARA-10
EA-10 EUR-12 SIG-01 MMO-01 IO-13 AGRE-00 CEA-01
CIAE-00 DODE-00 FRB-03 H-01 INR-07 INT-05 LAB-04
NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15 STR-07
ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 SOE-02 OMB-01
DOE-11 XMB-02 OPIC-03 /162 R

DRAFTED BY USDOC/ITA:SMARCUSS:NEA/RA:DTMORRISON:YW

APPROVED BY NEA/RA:SEPALMER,JR

L/NEA:DSMALL

EB/BP:TSCHLENNER

AF/EPS:LWHITE (SUBS)

ARA/ECP:WSKOK (SUBS)

EA/EP:DSTEBBING (SUBS)

EUR/RPE:RLAMANTIA (SUBS)

NEA:SSOBER (SUBS)

-----055115 041816Z /70

R 040614Z PEB 78

FM SECSTATE WASHDC

TO ALL DIPLOMATIC POSTS

USINT BAGHDAD

AMCONSUL ALEXANDRIA

AMCONSUL DHAHRAN

XMT AMEMBASSY BANGUI

AMEMBASSY GABORONE

AMEMBASSY BRIDGETOWN

USINT HAVANA

AMEMBASSY KIGALI

AMEMBASSY LOME

AMEMBASSY MAPUTO

AMCONSUL MARTINIQUE

AMEMBASSY MASERU

AMEMBASSY MBABANE

AMEMBASSY NASSAU

AMEMBASSY PARAMARIBO

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 030207

AMEMBASSY PORT LOUIS

AMEMBASSY PORT MORESBY

AMEMBASSY SUVA

LIMITED OFFICIAL USE STATE 030207

USEC, USOEC

E.O. 11652: N/A

TAGS: ETRD

SUBJECT: FOREIGN BOYCOTTS: FINAL EXPORT ADMINISTRATION ACT REGULATIONS

REF: A) STATE A-4288 (10/27/77); B) STATE 15730;
C) STATE 281768 (11/28/75); D) STATE 306773

1. FINAL COMMERCE DEPARTMENT EXPORT ADMINISTRATION ACT (EAA) REGULATIONS WERE ISSUED ON JANUARY 18 TO TAKE EFFECT ON THAT DAY. TEXT WAS PRINTED IN FEDERAL REGISTER ON JANUARY 25. COPIES OF TEXT ARE BEING POUCHEO TO ALL ADDRESSEE POSTS.

2. FOLLOWING ARE THE MORE SIGNIFICANT CHANGES TO PROPOSED REGULATIONS (SEE REFAIR) MADE BY FINAL REGULATIONS BASED ON PUBLIC COMMENTS RECEIVED AND COMMERCE DEPARTMENT EFFORTS TO ENSURE EFFECTIVE, WORKABLE PATTERN OF REGULATION CONSISTENT WITH PROVISIONS OF EAA.

A. 369.1(C) DEFINITION OF "CONTROLLED IN FACT"

LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 03 STATE 030207

UNDER FINAL REGULATIONS, NO FOREIGN SUBSIDIARY OR AFFILIATE OF A U.S. CONCERN WILL BE DEEMED TO BE CONTROLLED IN FACT. INSTEAD, CRITERIA IN PROPOSED REGS WHICH WOULD

HAVE CREATED CONCLUSIVE PRESUMPTION OF CONTROL WILL NOW CREATE REBUTTABLE PRESUMPTIONS OF CONTROL. (CHANGE RECOGNIZES THAT THERE MAY BE EXCEPTIONAL SITUATIONS IN WHICH ONE OR MORE OF THE CRITERIA ARE MET BUT THE U.S. CONCERN NONETHELESS LACKS CONTROL IN FACT OVER THE ACTIVITIES OF THE SUBSIDIARY/AFFILIATE OR OVER A PARTICULAR TRANSACTION OF THE SUBSIDIARY/AFFILIATE.)

B. U.S. COMMERCE - ANCILLARY SERVICES

UNDER FINAL REGULATIONS, ACQUISITION OF "ANCILLARY SERVICES" FROM THE U.S. BY A FOREIGN SUBSIDIARY DOES NOT BRING AN OTHERWISE WHOLLY FOREIGN TRANSACTION INTO U.S. COMMERCE. ANCILLARY SERVICES ARE SERVICES PROVIDED PRIMARILY TO THE SUBSIDIARY RATHER THAN THE SUBSIDIARY'S CUSTOMER AND INCLUDE SUCH THINGS AS LEGAL, FINANCIAL, ACCOUNTING, AND TRANSPORTATION SERVICES.

C. RISK OF LOSS CLAUSES

UNDER FINAL REGULATIONS, INTRODUCTION OF RISK OF LOSS (I.E., PROVISIONS WHICH PLACE FINANCIAL RISK OF NON-

DELIVERY ON BLACKLISTED PERSONS) AFTER REPEAT AFTER
EFFECTIVE DATE OF REGULATIONS IS PRESUMED TO CONSTITUTE
EVASION. PRESUMPTION REBUTTABLE BY SHOWING THAT USAGE IS
CUSTOMARY WITHOUT REGARD TO BOYCOTTING OR NON-BOYCOTTING
CHARACTER OF COUNTRY TO WHICH IT RELATES AND THAT IT HAS
A LEGITIMATE (NON-BOYCOTT) PURPOSE. USE OF SUCH A PRO-
VISION BY PERSON WHO USED IT PRIOR REPEAT PRIOR TO
EFFECTIVE DATE OF REGULATIONS IS PRESUMED NOT REPEAT NOT
TO CONSTITUTE EVASION IF THE PROVISION HAD BEEN CUSTO-
MARILY USED BY THAT PERSON PRIOR TO THE EFFECTIVE DATE
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 04 STATE 030207

OF REGULATIONS.

D. LOCAL LAW EXCEPTION - PRODUCTS FOR "ONE'S OWN USE"

UNDER FINAL REGULATIONS, GOODS IMPORTED BY U.S. PERSON
RESIDENT IN A BOYCOTTING COUNTRY FOR RESALE IN RETAIL
OPERATION ARE NOT IMPORTED FOR ONE'S OWN USE AND,
THEREFORE, DO NOT QUALIFY UNDER LOCAL LAW EXCEPTION.
HOWEVER, GOODS IMPORTED FOR INCORPORATION INTO ANOTHER
PRODUCT IN MANUFACTURING OPERATION DO QUALIFY, AS DO
GOODS IMPORTED FOR INCORPORATION INTO A CONSTRUCTION
PROJECT, SO LONG AS THEY ARE OF A TYPE CUSTOMARILY
INCORPORATED INTO SUCH PROJECT AND BECOME PERMANENTLY
AFFIXED AS A FUNCTIONAL PART OF THE PROJECT.

E. EVASION

UNDER FINAL REGULATIONS, IT IS EVASION TO USE ANY
ARTIFICE OR DEVICE INTENDED TO PLACE PERSON AT A
COMMERCIAL DISADVANTAGE BECAUSE HE IS BLACKLISTED.
RISK OF LOSS PROVISIONS, AS DESCRIBED AND QUALIFIED ABOVE,
ARE TO BE EVALUATED UNDER THIS GENERAL RULE.

F. PRE-SELECTION SERVICES

UNDER FINAL REGULATIONS, PROVISION OF PRE-SELECTION
SERVICES BY U.S. PERSON DOES NOT DESTROY AVAILABILITY OF
UNILATERAL SELECTION EXCEPTION BUT SUCH SERVICES MUST BE
OF A KIND CUSTOMARILY PERFORMED BY PROVIDER OF THE
SERVICE OR INDUSTRY OF WHICH HE IS A PART AND MUST NOT
BE BOYCOTT BASED.

LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 05 STATE 030207

G. INTENT

UNDER FINAL REGULATIONS, MOTIVE IS IRRELEVANT TO INTENT
UNDER THE LAW. INSTEAD, REQUISITE INTENT FOR FINDING A
VIOLATION EXISTS WHEN COMPLIANCE WITH BOYCOTT IS AT
LEAST ONE OF THE REASONS FOR A PERSON'S ACTION. IT DOES
NOT MATTER THAT PERSON ALSO HAD A LEGITIMATE BUSINESS
REASON.

ALSO, INFORMATION IS DEEMED TO BE FURNISHED WITH THE
REQUISITE INTENT IF PERSON FURNISHING THE INFORMATION
KNOWS THAT IT WAS SOUGHT FOR BOYCOTT PURPOSES.

H. SERVICES PERFORMED WITHIN BOYCOTTING COUNTRY UNDER
FINAL REGULATIONS

IN ORDER TO QUALIFY UNDER UNILATERAL SELECTION EXCEPTION,
SERVICES SELECTED BY CUSTOMER IN A BOYCOTTING COUNTRY
MUST BE OF A TYPE CUSTOMARILY PERFORMED ON SITE OR WITHIN
THE COUNTRY AND THE PART PERFORMED WITHIN COUNTRY MUST
BE A NECESSARY AND NOT INSIGNIFICANT PART OF THE TOTAL
SERVICE PERFORMED.

3. POSTS SHOULD BE GUIDED BY FOLLOWING IN SITUATIONS
WHERE FOREIGN BOYCOTT ISSUES MAY ARISE:

A. FOREIGN SERVICE POSTS AND U.S. OFFICERS/STAFF ARE
COVERED BY THE PROHIBITIONS AND EXCEPTIONS OF THE EAA
REGULATIONS AS THEY RELATE TO U.S. PERSONS (SEC. 369.2(D)).
IN ADDITION TO SPECIFIC PROHIBITIONS SET FORTH IN EAA,
THE ACT ALSO CONTINUES BROAD U.S. POLICY OF OPPOSING
FOREIGN BOYCOTTS OF FRIENDLY COUNTRIES AND ENCOURAGING

PERSONS TO REFUSE TO TAKE ACTIONS WHICH HAVE EFFECT OF
FURTHERING OR SUPPORTING SUCH BOYCOTTS -- EVEN IF SUCH
ACTIONS ARE NOT PROHIBITED BY EAA. ACCORDINGLY, POSTS
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 06 STATE 030207

MAY NOT FURNISH INFORMATION IN BOYCOTT CONTEXT CONCERNING
BUSINESS RELATIONSHIPS OF U.S. FIRMS WITH BOYCOTTED
COUNTRIES OR BLACKLISTED PERSONS.

B. ALTHOUGH EMBASSY LOCAL EMPLOYEES ARE NOT SUBJECT TO
PROVISIONS OF EAA, POSTS HAVE RESPONSIBILITY IN SUPER-
VISING THEIR ACTIVITIES FOR ENSURING THAT THEIR ACTIONS
IN CARRYING OUT OFFICIAL DUTIES ARE FULLY CONSISTENT WITH
U.S. LAW AND POLICY.

C. WE HAVE INITIATED A REVIEW OF OUR POLICY OF PROHIBITING
POSTS FROM REPORTING ON OR OTHERWISE PROMOTING TRADE
OPPORTUNITIES BASED ON DOCUMENTS KNOWN TO CONTAIN PRIMARY
BOYCOTT CLAUSES (E.G., REQUIREMENT THAT GOODS/SERVICES

OF BOYCOTTED COUNTRY NOT BE IMPORTED INTO BOYCOTTING COUNTRY IN PROPOSED TRANSACTION). AS A NUMBER OF POSTS HAVE CORRECTLY POINTED OUT, U.S. FIRMS ARE PERMITTED TO COMPLY WITH SUCH A REQUIREMENT (EXCEPTING NEGATIVE CERTIFICATE OF ORIGIN REQUIREMENTS IN SHIPPING DOCUMENTS AFTER JUNE 21, 1978). IT IS OUR POSITION THAT U.S. FIRMS SHOULD BE ENCOURAGED TO NEGOTIATE ILLEGAL BOYCOTT CONDITIONS OUT OF POTENTIAL TRANSACTIONS. NO USEFUL PURPOSE WOULD BE SERVED BY DENYING THEM THE OPPORTUNITY TO DO SO. THE MATTER OF CONTINUED APPLICABILITY OF DEPARTMENT OF COMMERCE CIRCULAR 21 OF 11/26/75 (REF C) IS UNDER REVIEW BY THE DEPARTMENT OF COMMERCE.

D. POSTS MAY NOT SUPPLY TO ANY PERSON INFORMATION ABOUT WHETHER PERSONS ARE BLACKLISTED IN ANY CONTEXT IN WHICH SUCH INFORMATION MIGHT BE USED FOR PURPOSES OF COMPLIANCE WITH BOYCOTT REQUIREMENTS OR ENFORCEMENT OF SUCH REQUIREMENTS. INFORMATION WHICH POSTS MAY HAVE REBLACKLISTING OF A PARTICULAR U.S. FIRM OR OTHER BOYCOTT-LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 07 STATE 030207

RELATED ACTIONS TAKEN OR CONTEMPLATED WITH RESPECT TO A PARTICULAR FIRM MAY BE SHARED WITH OFFICIALS OF THAT U.S. FIRM AND WITH ITS SUBSIDIARY, AFFILIATE OR AUTHORIZED REPRESENTATIVE.

E. IF POSTS PROPOSE TO MAKE ANY PROCUREMENT DECISIONS ON BASIS OF BOYCOTT CONSIDERATIONS, GUIDANCE SHOULD BE SOUGHT FROM DEPARTMENT AS TO POLICY/LEGAL IMPLICATIONS OF SUCH SELECTION. NOTHING CONTAINED IN FINAL REGULATIONS PREVENTS POSTS FROM CONTINUING WITH NORMAL PROCUREMENT BASED ON CRITERIA IN GENERAL USE IN NON-BOYCOTT SITUATIONS (E.G., PRICE, QUALITY, SERVICE, STANDARDIZATION).

F. ALTHOUGH ATTENTION HAS BEEN ON ARAB BOYCOTT OF ISRAEL, EAA FINAL REGULATIONS APPLY TO ALL FOREIGN BOYCOTTS UNLESS (AS IN CASE OF BOYCOTT OF RHODESIA) SANCTIONED BY USG.

G. EAA INTERPRETATION AND ENFORCEMENT IS NOT RPT NOT THE RESPONSIBILITY OF POSTS. ACCORDINGLY, POSTS SHOULD NOT GIVE ADVICE AS TO WHETHER PARTICULAR ACTIONS ARE OR ARE NOT IN COMPLIANCE WITH EAA REGULATIONS. POSTS MAY, OF COURSE, POINT OUT SECTIONS OF LAW OR REGULATIONS WHICH APPEAR TO HAVE APPLICABILITY AND SHOULD ADVISE U.S. PERSONS WHO HAVE CONTINUING UNCERTAINTY (OR WHOSE ACTIONS APPEAR TO RUN COUNTER TO GENERAL THRUST OF LAW OR REGULATIONS) TO SEEK INTERPRETATION OF THEIR SITUATION THROUGH LEGAL COUNSEL OR DIRECTLY FROM COMMERCE DEPARTMENT. (SEE REF D RE PROPOSED REGULATIONS ON

INTERPRETIVE LETTER PROCEDURES.)

H. WHERE QUESTIONS OF INTERPRETATION (E.G., RE LANGUAGE
IN GENERAL USE IN LETTERS OF CREDIT, REQUESTS FOR BIDS,
CONTRACTS, REGISTRATION OF PATENTS/TRADEMARKS, REGIS-
TRATION OF AGENTS, INCORPORATION) HAVING BROAD APPLICATION
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 08 STATE 030207

TO U.S. BUSINESS DEALINGS IN HOST COUNTRY NEED TO BE
ANSWERED OR WHERE HOST COUNTRY OFFICIALS SEEK INTERPRETA-
TION FROM POSTS, QUESTIONS SHOULD BE FORWARDED BY POSTS
USING CABLE MESSAGES WITH SUBJECT CAPTION, "FOREIGN
BOYCOTTS: EAA REGULATIONS" ADDRESSED JOINTLY TO COMMERCE
AND STATE.

I. POSTS SHOULD BRING TO ATTENTION OF ALL USG EMPLOYEES
WHO ARE BEING REASSIGNED TO BOYCOTTING COUNTRIES THOSE
PROVISIONS OF REGULATIONS WHICH MAY RELATE TO PROCUREMENT/
SHIPMENT OF PERSONAL EFFECTS. WITH RESPECT TO ENTRY OF
SUCH PERSONAL EFFECTS INTO BOYCOTTING COUNTRIES, WE
EXPECT POSTS TO MAKE EVERY REASONABLE EFFORT TO OBTAIN
AGREEMENT TO PERMIT ENTRY NOTWITHSTANDING MANUFACTURE BY
BLACKLISTED FIRMS.

4. POSTS IN PAST COMMUNICATIONS HAVE ASKED NUMBER OF
QUESTIONS RE APPLICABILITY OF PROPOSED EAA REGULATIONS.
IN ALL CASES, LEGAL CULPABILITY DEPENDS ON WHETHER THE
REQUISITE INTENT TO COMPLY WITH, FURTHER OR SUPPORT THE
BOYCOTT IS PRESENT AND WHETHER THE ACTION IS TAKEN WITH
INTENT TO EVADE THE LAW. LEGAL CULPABILITY ALSO DEPENDS
ON WHETHER THE ACTIVITY IS SUBJECT TO THE JURISDICTION
OF THE LAW IN THE FIRST INSTANCE. THEREFORE, CATEGORICAL
ANSWERS TO QUESTIONS CANNOT BE GIVEN ON THE BASIS OF LESS
THAN COMPLETE FACTS. ALL THE FACTS AND CIRCUMSTANCES OF
A PARTICULAR TRANSACTION OR ACTIVITY MUST BE EVALUATED IN
ORDER TO REACH DEFINITIVE CONCLUSIONS ON LEGAL CULPA-
BILITY. WITH THAT CAVEAT, THE FOLLOWING QUESTIONS WITH
ANSWERS BASED ON FINAL REGULATIONS ARE SUPPLIED FOR
POSTS' INFORMATION AND USE:

A) WILL U.S. FIRM BE LIABLE UNDER EAA FOR BOYCOTT-RELATED
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 09 STATE 030207

ACTIONS TAKEN BY AGENT RESIDENT IN BOYCOTTING COUNTRY
WHERE SUCH ACTIONS TAKE IN SELF-INTEREST OF AGENT AND NOT
AT INSTRUCTION OF U.S. FIRM (E.G., SUPPLY BY AGENT TO
GOVT. AGENCY, BANK OR FOREIGN BUYER OF A LOCAL BOYCOTT
OFFICE CERTIFICATION THAT U.S. FIRM IS NOT BLACKLISTED)?

ANSWER: U.S. FIRM IS LIABLE FOR ACTIONS TAKEN ON ITS BEHALF BY ITS AGENT, REGARDLESS OF WHETHER PURSUANT TO U.S. FIRM'S INSTRUCTIONS. WHAT RESIDENT AGENT MAY DO IS GOVERNED IN PART BY EXCEPTION IN REGULATIONS COVERING ACTIVITIES OF BOYCOTTING COUNTRY RESIDENTS. FURTHER, U.S. FIRM'S RESPONSIBILITY WILL NOT ATTACH TO ACTIONS OF AGENT WHICH ARE CONTRARY TO HIS PRINCIPAL'S INSTRUCTIONS OR OUTSIDE THE SCOPE OF HIS AUTHORITY AS AGENT.

B) WILL U.S. FIRM BE PERMITTED TO CERTIFY IN SHIPPING DOCUMENT THAT GOODS WILL BE SHIPPED ON VESSEL PERMITTED TO CALL AT BOYCOTTING COUNTRY PORT?

ANSWER: MAY BE USED UNTIL JUNE 22, 1978. BUT U.S. FIRMS WILL BE ABLE TO CERTIFY THAT GOODS WILL BE SHIPPED ON A VESSEL WHICH DOES NOT CALL ON AN ISRAELI PORT EN ROUTE EVEN AFTER THAT DATE

C) WHEN WILL PROHIBITION AGAINST USE OF NEGATIVE, BLACKLISTING OR SIMILARLY EXCLUSIONARY TERMS REQUIRED BY IMPORTING COUNTRY IMPORT AND SHIPPING DOCUMENT REQUIREMENTS TAKE EFFECT IF SUCH CLAUSES APPEAR AS CONDITIONS IN LETTERS OF CREDIT?

ANSWER: JUNE 22, 1978.

D) WHAT ACTION MAY BE TAKEN BY U.S. FIRM (OR BY POST ON BEHALF OF FIRM) IN SITUATION WHERE COMPETITOR FIRM HAS ACCUSED U.S. FIRM THROUGH MEDIA OR IN COMMUNICATION WITH BOYCOTT OFFICE, GOVT. AGENCY, OR POTENTIAL PURCHASER
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 10 STATE 030207

OF VIOLATING HOST COUNTRY BOYCOTT RULES? MAY ACCUSATION BE DENIED? MAY SOURCE (USUALLY ANONYMOUS) BE IMPUGNED?

ANSWER: THIS IS AN EXTREMELY SENSITIVE AND COMPLICATED AREA. POSTS ARE REMINDED THAT GOVERNMENT PERSONNEL ARE THEMSELVES SUBJECT TO THE LAW AND ITS PENALTIES. PARTICULAR ATTENTION SHOULD BE PAID TO THE INFORMATION FURNISHING PROHIBITIONS.

FOR U.S. FIRMS THEMSELVES, TWO SITUATIONS MUST BE DISTINGUISHED: (A) U.S. FIRMS WHICH ARE NOT RESIDENTS OF BOYCOTTING COUNTRY; (B) U.S. FIRMS WHICH ARE RESIDENTS OF BOYCOTTING COUNTRY.

FINAL REGULATIONS PROVIDE THAT IT IS A VIOLATION OF THE LAW TO AGREE TO COMPLY WITH THE BOYCOTT LAWS OF A BOYCOTTING COUNTRY. HOWEVER, FINAL REGULATIONS PERMIT U.S. FIRMS RESIDENT IN BOYCOTTING COUNTRY TO COMPLY WITH

BOYCOTT LAWS OF THAT COUNTRY WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN THAT COUNTRY AND WITH RESPECT TO IMPORTS OF SPECIFICALLY IDENTIFIABLE PRODUCTS FOR THEIR OWN USE.

DENIAL OF ACCUSATION OF VIOLATION OF BOYCOTT LAWS IS NOT PER SE EITHER AN AGREEMENT TO COMPLY WITH BOYCOTT LAWS OR A PROHIBITED FURNISHING OF BOYCOTT INFORMATION, BUT

UNDER CERTAIN CIRCUMSTANCES COULD CONSTITUTE AN IMPLIED AGREEMENT TO COMPLY WITH SUCH LAWS, FOR EXAMPLE, WHERE DENIAL OF PAST VIOLATIONS IS REGARDED AS A PROMISE OF FUTURE CONFORMITY TO BOYCOTT LAWS. IF SO, FOR U.S. FIRMS NOT RESIDENT IN BOYCOTTING COUNTRY IT WOULD BE IN VIOLATION OF LAW.

LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 11 STATE 030207

FOR U.S. FIRMS WHICH ARE RESIDENT IN BOYCOTTING COUNTRY, "ITHER AN EXPRESS OR IMPLIED AGREEMENT TO COMPLY WITH BOYCOTT LAWS WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN THE COUNTRY OR WITH RESPECT TO IMPORTS OF SPECIFICALLY IDENTIFIABLE PRODUCTS FOR OWN USE IS NOT A VIOLATION OF LAW, BUT IF SUCH AGREEMENT, WHETHER EXPRESS OR IMPLIED, EXTENDS TO OTHER BOYCOTT LAWS, THEN A VIOLATION OF THE LAW MIGHT OCCUR. THEREFORE, ANY DENIAL OF PAST VIOLATIONS BY U.S. FIRMS RESIDENT IN BOYCOTTING COUNTRY WOULD HAVE TO BE CAREFULLY PHRASED AND DELIVERED IN A CONTEXT WHICH CREATES NO IMPLIED PROMISE OF CONFORMITY WITH BOYCOTT LAWS FOR OTHER THAN ACTIVITIES EXCLUSIVELY WITHIN THE COUNTRY OR FOR IMPORTS OF SPECIFICALLY IDENTIFIABLE GOODS FOR THE U.S. FIRM'S OWN USE.

WITHIN THESE GENERAL CONSIDERATIONS, CATEGORICAL GUIDANCE IMPOSSIBLE BECAUSE OF THE WIDE VARIETY OF CIRCUMSTANCES WHICH COULD EXIST.

E) WHAT ACTION MAY A U.S. FIRM TAKE UPON RECEIPT OF REQUEST FOR BIDS WHICH CONTAINS PRIMARY BOYCOTT CLAUSE (I.E., GOODS AND SERVICES OF BOYCOTTED COUNTRY TO BE EXCLUDED)? MAY FIRM BID? MUST IT TAKE EXCEPTION?

ANSWER: FIRM MAY BID. CLAUSE THAT GOODS OR SERVICES FROM BOYCOTTED COUNTRY WILL NOT BE INCLUDED IN THE TRANSACTION IS NOT A VIOLATION OF LAW.

F) WHAT ACTION MAY A U.S. FIRM TAKE UPON RECEIPT OF REQUEST FOR BIDS WHICH CONTAINS SECONDARY OR SO-CALLED TERTIARY BOYCOTT CLAUSES (E.G., GOODS/SERVICES OF BLACKLISTED FIRMS OR USE OF BLACKLISTED VESSELS TO BE EXCLUDED)? MAY FIRM BID? MUST IT TAKE EXCEPTION?

LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 12 STATE 030207

ANSWER: FIRM MAY BID BUT MUST MAKE IT CLEAR THAT IF BID ACCEPTED, ILLEGAL BOYCOTT CONDITIONS MAY NOT BE AGREED TO OR COMPLIED WITH. CLAUSE THAT GOODS OR SERVICES OF BLACKLISTED FIRMS OR VESSELS WILL BE EXCLUDED IS A VIOLATION OF LAW.

G) WHAT EFFECT WHERE A LETTER OF CREDIT REQUIRES ONLY A POSITIVE CERTIFICATE OF COUNTRY ORIGIN THOUGH INSTRUCTION ATTACHED TO LETTER OF CREDIT CONTAINS CLEAR STATEMENT THAT GOODS OF BOYCOTTED COUNTRY ARE PROHIBITED FROM ENTERING COUNTRY OF DESTINATION?

ANSWER: POSITIVE CERTIFICATE OF COUNTRY OF ORIGIN MAY GENERALLY BE SUPPLIED. AGREEMENT NOT TO IMPORT GOODS OF BOYCOTTED COUNTRY IN PARTICULAR TRANSACTION IS ALSO PERMISSIBLE. THEREFORE, IT MAKES NO DIFFERENCE THAT EITHER THE LETTER OF CREDIT BENEFICIARY OR IMPLEMENTING BANK KNOWS THAT GOODS OF BOYCOTTED COUNTRY MAY NOT BE INCLUDED IN SHIPMENT.

5. FOR NEA POSTS IN COUNTRIES WHICH APPLY SECONDARY BOYCOTT AGAINST BLACKLISTED U.S. FIRMS: YOU ARE REQUESTED TO:

-- SUPPLY TEXT OF FINAL REGULATIONS TO APPROPRIATE HOST COUNTRY OFFICIALS.

-- EXPRESS SATISFACTION THAT NON-CONFRONTATIONAL APPROACH HAS BEEN FOLLOWED BY BOTH OUR GOVERNMENTS IN HANDLING CLEAR DIFFERENCES WHICH EXIST BETWEEN US OVER BOYCOTT ISSUES.

-- NOTE THAT MANY CHANGES NEEDED TO ALLOW MUTUALLY
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 13 STATE 030207

BENEFICIAL ECONOMIC AND COMMERCIAL RELATIONSHIPS TO BE MAINTAINED AND STRENGTHENED HAVE ALREADY BEEN TAKEN ON AN AD HOC BASIS BY U.S. FIRMS AND ARAB GOVERNMENTS OR BUSINESSMEN. CHANGES WHICH HAVE TAKEN U.S. FIRMS OUT

OF ACTIVE ROLE IN SUPPLY OF BOYCOTT-TYPE CERTIFICATIONS AND SELECTION OF COMPONENTS OR SUBCONTRACTORS ON BASIS OF BOYCOTT CONSIDERATIONS NONETHELESS LEAVE IMPORTING COUNTRIES FREE TO DETERMINE WITH WHOM THEY WILL DO BUSINESS.

-- STRESS THAT IT HAS BEEN USG OBJECTIVE FROM TIME OF HEARINGS ON ANTI-BOYCOTT LEGISLATION EARLY THIS YEAR THROUGH THE WRITING OF FINAL REGULATIONS TO CURB INTRUSIONS OF BOYCOTT PRACTICES INTO U.S. COMMERCE WITHOUT CHALLENGING RIGHTS WHICH FOREIGN GOVERNMENTS MAY EXERCISE TO REGULATE THEIR OWN COMMERCE, INCLUDING DESTINATION OF THEIR EXPORTS AND SOURCE OF THEIR IMPORTS.

-- URGE THAT CHANGES WHICH HAVE BEEN TAKEN ON AN AD HOC BASIS BE GENERALIZED SO THAT SMALLER FIRMS AND OTHER FIRMS NEW TO THE BOYCOTTING COUNTRY MARKET WILL NOT BE DISADVANTAGED IN FAVOR OF LARGER AND MORE FAMILIAR FIRMS WHICH HAVE ALREADY BEEN ABLE TO MAKE THE ADJUSTMENTS NEEDED TO CONFORM WITH BOTH U.S. AND BOYCOTTING COUNTRY LAWS AND REGULATIONS.

-- MAKE BEST EFFORTS TO AID U.S. FIRMS EITHER ON CASE-BY-CASE BASIS OR THROUGH EFFORTS TO OBTAIN POLICY CHANGES BY GOVTs, BANKS, CHAMBERS OF COMMERCE, BOYCOTT OFFICES, ETC., WHERE EXISTING POLICIES AND PRACTICES IMPEDE EXPANSION OF MUTUALLY BENEFICIAL COMMERCIAL RELATIONSHIPS. FOR EXAMPLE, WHERE PROBLEMS ARISE FROM:

- RISK THAT U.S. FIRMS, UNABLE TO RESPOND TO BOYCOTT INQUIRIES, MAY BE BLACKLISTED BECAUSE OF ACCUSATIONS BY LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 14 STATE 030207

COMPETITORS.

- CONTINUING USE OF NEGATIVE CERTIFICATIONS IN LETTERS OF CREDIT, SHIPPING DOCUMENTS, CONTRACTS, AGENCY REGISTRATIONS, APPLICATIONS TO INCORPORATE, PATENT/TRADEMARK REGISTRATIONS, ETC.

- CONTINUING ATTEMPT TO HAVE BOYCOTT-BASED SELECTIONS MADE BY NON-RESIDENT U.S. FIRMS.

- USE OF BOYCOTT QUESTIONNAIRES GENERALLY.

-- WARN ALL U.S. GOVERNMENT PERSONNEL THAT THE LAW APPLIES TO THEM AND THAT THEY MAY BE SUBJECT TO PENALTIES FOR VIOLATIONS.

-- FACILITATE ENTRY OF PERSONAL EFFECTS/AUTOS OF USG EMPLOYEES WHEN BOYCOTT PROBLEMS ARISE.

7. ALL ADDRESSEE POSTS ARE REQUESTED TO REPORT FULLY ON HOST COUNTRY REACTIONS, IF ANY, TO FINAL EAA REGULATIONS AND ON SPECIFIC TYPES OF PROBLEMS FACED BY U.S. FIRMS (INCLUDING THEIR CONTROLLED SUBSIDIARIES AND AFFILIATES)

IN EFFORTS TO CONFORM TRANSACTIONS TO EAA REGULATIONS AND
HOST COUNTRY LAWS. ALSO REQUEST ANY INFORMATION
AVAILABLE FROM MIDDLE EAST POSTS CONCERNING PLANS BY
ARAB LEAGUE BOYCOTT COMMISSIONERS FOR MEETING OF BOYCOTT
CONFERENCE POSTPONED LAST DECEMBER. VANCE

LIMITED OFFICIAL USE

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptoning: X
Capture Date: 26 sep 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BOYCOTTS, EXPORTS, LEGISLATIVE BILLS, TEXT
Control Number: n/a
Copy: SINGLE
Draft Date: 04 feb 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE030207
Document Source: ADS
Document Unique ID: 00
Drafter: USDOC/ITA:SMARCUSS:NEA/RA:DTMORRISON:YW
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Expiration:
Film Number: D780054-0403
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197802120/baaafbsv.tel
Line Count: 549
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: e59ab5cf-c288-dd11-92da-001cc4696bcc
Office: ORIGIN NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 10
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: A) STATE A-4288 (10/27/77); B) STATE 15730; C) STATE 281768 (11/28/75); D) STATE 306773
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3474886
Secure: OPEN
Status: <DBA CORRECTED> gwr 970826
Subject: FOREIGN BOYCOTTS: FINAL EXPORT ADMINISTRATION ACT REGULATIONS
TAGS: ETRD, US
To: ALL DIPLOMATIC POSTS BAGHDAD MULTIPLE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/e59ab5cf-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014